IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 13.06.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice AR.RAMALINGAM

Habeas Corpus Petition No.946 of 2004
and
H.C.M.P. No.125 of 2004

Jesintha Pandian ... Petitioner

vs.

1. State of Tamilnadu, rep. by
Secretary to Government,
Prohibition and Excise
Department, Fort St. George,
Chennai 600 009.

2. District Collector and
District Magistrate of
Tuticorin District,
Tuticorin. ... Respondents

For Petitioner : Mr.V.K.Moorthy
For Respondents : Mr.Abudu Kumar Rajarathinam,
Government Advocate (Crl. Side).

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records in Detention order passed in HS (M) Confdl. No.17/2004 dated 25.7.2004 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the body of the petitioner's husband Pasupathy Pandiyan, now confined in Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty.

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

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Wife of the detenu, who was detained as Goonda by the impugned detention order dated 25.07.2004, challenges the same in this Petition.

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2. Though several grounds have been raised questioning the order of detention, learned counsel appearing for the petitioner at the foremost projected the delay in disposal of the representation dated 03.08.2004. With reference to the said contention, learned Government Advocate furnished the details regarding the disposal of the said representation.

3. It is seen that the representation dated 03.08.2004 was received on 16.8.2004 and remarks were called for on 17.8.2004. The remarks were received on 25.08.2004. With reference to the delay between 16.08.2004 and 25.08.2004, it is seen that the representation was received by the Collectorate on 19.08.2004 and remarks were called for from the Sponsoring Authority on the same day, that is, on 19.08.2004, and the remarks were received from the Sponsoring Authority on 20.08.2004. Thereafter, the same were sent to the Government on 23.08.2004. The file was submitted on 26.08.2004. The Under Secretary and the Deputy Secretary dealt with the same on 30.08.2004 . The Minister for Prohibition and Excise dealt with the file on 31.08.2004. Rejection letter was prepared on 03.09.2004.

4. The particulars furnished show that though rejection letter was sent to the Superintendent of Central Prison for service on the detenu on 03.09.2004, the same was served on the detenu only on 13.09.2004, that is, after a period of ten days. There is no proper explanation for such a huge delay at the hands of the Superintendent, Central Prison.

5. In this regard, it is worthwhile to refer to the decision of a Division Bench of this Court reported in 1999 (2) Crimes 287 (P.Chinnasamy Thevar v. State of Tamil Nadu and another). While considering similar delay in intimating the fact of disposal of the representation to the detenu, after referring the Judgment of the Supreme Court, namely, AIR 1981 SC 1126 (Harish Pahwa v. State of Uttar Pradesh), the Division Bench arrived at a conclusion that non-explanation for the delay in intimating the fact of disposal to the detenu would also result in rendering the detention invalid.

6. As stated above, in the absence of acceptable explanation for the delay in intimating the fact of rejection to the detenu, we are in entire agreement with the ratio laid down in the above referred decision and the same is applicable to the case on hand.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention dated 25.07.2004 is set aside. The

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detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause. Consequently, H.C.M.P. No.125 of 2004 is closed.

13.06.2005.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government of
Tamil Nadu,
Prohibition and Excise
Department, Fort St. George,
Chennai 600 009.

2. The District Collector and
District Magistrate of
Tuticorin District,
Tuticorin.

3. The Joint Secretary to Government of
Tamil Nadu,
Public (Law and Order)
Chennai-9.

4. The Superintendent of Prison,
Palayamkottai.

5. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.V.K.Moorthy, Advocate, SR.23588
1 cc to the Public Prosecutor, SR.24288

ps (co)

dv

HCP. No.946 of 2004
& HCMP No.125/2004.

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